

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7

Matthew Mark Higgins
Amy Beth Higgins
f/k/a Amy Beth Meyer,

BKY No.: 03-36033

Debtors.

Charles W. Ries, Trustee,

Adv. No.: 04-3247

Plaintiff,

vs.

Rochester Motor Company,
d/b/a Rochester Ford, and
Affinity Plus Federal Credit Union,

Defendants.

**RESPONSE BY ROCHESTER MOTOR COMPANY ("ROCHESTER FORD")
TO PLAINTIFF'S SUMMARY JUDGMENT MOTION**

In his motion, the Plaintiff admits that the \$4,000.00 payment in question was used to pay down a lien held by co-defendant Affinity Plus Federal Credit Union ("**Affinity**"). Rochester Ford simply received delivery of that payment from the Debtors, and forwarded those funds to Affinity. Rochester Ford was, therefore, only a conduit in the process by which the \$4,000.00 was applied by Affinity to the Debtors' obligations owed to Affinity. Accordingly, Rochester Ford had no beneficial interest in the funds in question. By virtue thereof, Rochester Ford is not a "transferee" for purposes of Section 550 of the Bankruptcy Code. *See In re: Health Co. Intern.*, 195 B.R. 971 (BKY. D.Mass. 1996); *In re: Anchorage Marina, Inc.*, 93 B.R. 686 (BKY. D.N.D. 1930); *matter of R.A. Beck Builder, Inc.*, 34 B.R. 888 (BKY. W.D.Pa. 1983).

The Plaintiff admits that Rochester Ford received no benefit from the funds. Rochester Ford was not a creditor of the Debtors at the time of the transfer, and did not take the funds in question as payment of an antecedent debt. Rochester Ford simply remitted the \$4,000.00, plus some of its own money, to Affinity in order to satisfy a previous secured indebtedness owed by the Debtor to Affinity. Accordingly, Rochester Ford is not a transferee under Section 550 of the Bankruptcy Code, and the Trustee's motion for summary judgment should therefore be denied.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: September 15, 2004

/e/ Brian F. Leonard
By _____
Brian F. Leonard, #62236
Attorneys for Rochester Ford
100 South Fifth Street
Suite 2500
Minneapolis, Minnesota 55402-1216
(612) 332-1030

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UNSWORN CERTIFICATE OF SERVICE

Rochester Motor Company,
d/b/a Rochester Ford, and
Affinity Plus Federal Credit Union,

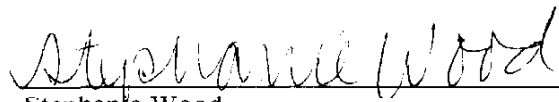
Defendants.

I, Stephanie Wood, declare under penalty of perjury that on the 15th day of September, 2004, I mailed via Federal Express a copy of the annexed ***Response by Rochester Motor Company to Plaintiff's Summary Judgment Motion*** on:

Charles W. Ries, Esq.
Maschka, Riedy & Ries
201 North Broad Street
Suite 200
P.O. Box 7
Mankato, MN 56002-0007

by overnighting to all parties copies thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the Federal Express box.

Dated: September 17, 2004


Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030